



COMMITTEE of the WHOLE

CITY COUNCIL

MINUTES
February 17, 2009
4:30 P.M.

COUNCIL MEMBERS PRESENT:

V. Spencer, S. Fuhs, D. Sterner, J. Waltman, M. Goodman-Hinnershitz, M. Baez

OTHERS IN ATTENDANCE:

L. Kelleher, S. Katzenmoyer, C. Younger, R. Hottenstein, T. McMahon

Mr. Spencer, President of Council, called the Committee of the Whole meeting to order at 4:48 p.m.

I. Executive Session

Council entered into executive session at 4:50 pm to discuss personnel matters.
Council exited executive session at 5:15 pm.

Council then broke into Public Works Committee and Administrative Oversight and Land Use Committee meetings.

The Committee of the Whole reconvened at 6 pm.

Additional persons in attendance – D. Hoag, C. Kanezo, C. Jones

II. Bernhart Update

Mr. Waltman stated his belief that the City should be suing these agencies for the lost use of the park.

Ms. Goodman-Hinnershitz questioned if the consultant has made site visits and examined the area regarding draining the lake. Ms. Hoag stated that a group of contractors was contacted to lower the water level. She stated that there are valve problems. She stated that no one was interested in performing the work. She stated that the situation is being re-evaluated. She stated that safety issues concerning the control of the outflow of water and using a phased approach are being studied. She

stated that a survey will be conducted both above and below water. She noted that the current plans will please DEP but not preclude dam repairs and refilling of the lake.

Mr. Fuhs questioned how low the water level needed to be to allow an inspection of the dam breast. Ms. Hoag stated that it must be down to 16 feet and consistently stay at that level.

Mr. Fuhs questioned if divers could assess the dam without draining the lake. Ms. Hoag stated the survey will be done by boat. She stated that work cannot begin until the lake thaws.

Mr. Waltman questioned the need for a fence around the perimeter during the draining process to keep people off the lake bed. Ms. Goodman-Hinnershitz noted the possibility of liability during this process. Mr. Jones noted that a snow fence was used at Angelica and could be used at Bernhart's as well. Mr. Younger stated that no trespassing signs should also be erected.

Mr. Fuhs questioned if the County has given support for this project. Mr. Jones noted that they have made no offer of support.

Ms. Goodman-Hinnershitz stated that a meeting should be held for surrounding residents with Muhlenberg officials and the County Commissioners should also be invited. She questioned if the report from the PA Department of Health was received. Ms. Kelleher stated that it had not been received, although it was promised by fall 2008. She stated that the report must be reviewed by the EPA before it will be released to the City.

Mr. Sterner questioned how much the City has spent on legal fees on this matter to date. Mr. Younger stated that the billing exceeded \$80,000.

Ms. Goodman-Hinnershitz stated her belief that the EPA has not been environmentally friendly.

Ms. Hoag stated that the EPA recently requested a fish count in the lake. She noted the urgency of the request. She stated that a change of position has occurred and now there is no need for the fish count.

Mr. Sterner questioned how long the City would wait for action by EPA and PA DEP. Mr. Waltman again stated that the City should be litigating the issue and requested that this be discussed at a Committee of the Whole meeting.

III. Other Business

Mr. Jones noted that two contract awards will appear on Council's February 23 agenda for the Lab building portion of the waste water treatment plant project.

Ms. Goodman-Hinnershitz stated that she visited the Pagoda after the wind storm damage. She questioned if repairs have been made to replace the roof tiles. Mr. Jones stated that the contractor is currently working on the price for repairs.

Mr. Sterner questioned if the City's insurance would cover this cost. Mr. Hottenstein stated that the Risk and Safety Coordinator is researching this possibility. The cost to repair must be compared to the cost of the insurance deductible.

Ms. Goodman-Hinnershitz questioned if the tiles would be cleaned up from the areas below. Mr. Jones stated that they would.

IV. Bushong Mill Dam

Larry Lloyd of the Berks County Conservancy joined the meeting at this time.

Mr. Jones introduced Mr. Lloyd. He distributed a copy of the letter from the PA DEP. The letter is not an order to remove the dam but states that the City is the owner and describes the City's responsibilities. He stated that there are efforts in PA to remove dams under certain conditions. This dam meets those conditions.

Mr. Lloyd distributed information. He noted that the dam is adjacent to Confluence Point Park. The photos show the mill race, the dam, and wall. He stated that the mill race is extremely dangerous and called it a death trap.

Mr. Waltman stated that this dam has been in its current condition for many years. He questioned why it needed to be removed. Mr. Lloyd noted that more people are using the area due to its location near Confluence Point Park and the nearby trail connectors. The increased use increases the probability of a liability to the City.

Mr. Lloyd described the background of this project. He stated that the partners (PA DEP Dam Safety, PA Fish and Boat Commission, American Rivers, US Army Corps of Engineers, Berks County Conservancy, Berks County Conservation District, Riverplace) have been meeting since November 2007. He stated that a proactive approach has been taken. The partners have been writing grants to secure funding for the study and possible removal of the dam and mill race. He distributed a letter of support from the PA Fish and Boat Commission. He stated that this will assist with the passage of fish (shad) and create free-flowing waters.

Mr. Fuhs questioned why the County was not approached. Mr. Lloyd stated that they may be in the future.

Mr. Fuhs stated that the partners are working to clear all rivers of all dams. He stated his belief that that stance is the driving point of this project. He stated his belief that removing the dam would negatively impact on fishing opportunities and would remove the historical value of this area. Mr. Lloyd referred again to the letter from the PA Fish and Boat Commission. He stated that the belief that removal would negatively affect fishing is misinformation. He stated that free-flowing water is better for fishing. He stated the historical issue would be addressed by the PA Historical Museum Commission (PHMC).

Mr. Waltman stated that this dam is approximately one mile downstream from Gring's Mill. He stated his belief that removing Bushong Mill dam is not really

opening up the waters. Mr. Lloyd stated that dams are removed in a step-by-step process going up river. He stated that Gring's Mill would be the next to be studied.

Mr. Waltman noted the close proximity of the canal locks to the Bushong Mill dam location. Mr. Lloyd noted that the PHMC would be addressing this issue as well.

Mr. Fuhs questioned, that as the partnership has been established, would they study the situation at Bernhart's. He stated that this situation is much more dangerous. He stated that he does not support the removal of the Bushong Mill Dam. He suggested the partners put this project aside and focus on Bernhart's. Mr. Lloyd stated that Bushong Mill dam was the focus as there is interest by the other agencies.

Mr. Waltman noted his agreement with Mr. Fuhs regarding the removal of this dam and the situation at Bernhart's. He noted that agencies are ignoring the contamination. He stated his hope that this partnership would study Bernhart's. Mr. Lloyd requested that these two issues remain separate.

Mr. Waltman questioned the amount of funding needed for the removal of the dam. Mr. Lloyd noted an estimate of \$124,000. He noted that there would be no cost to the City. He noted that Council needs to pass the resolution on the table to allow American Rivers to release the grant funds.

Mr. Sterner noted that a biologist was at the site when he made a visit. He stated the biologist's stance that the dam not be removed. Mr. Lloyd stated that the fish are temperature sensitive. He again stated that the PA Fish and Boat Commission recommends that the dam be removed.

Mr. Sterner stated that the County Parks Department feels the Stone Cliff pier will be compromised if this dam is removed. Mr. Lloyd stated that the County has received funding to repair the pier but that it will lose the funding if the dam is removed. He stated his willingness to assist the County with receiving grant money to reconstruct the pier as necessary after the dam has been removed.

Mr. Fuhs again stated the agenda of the PA Fish and Boat Commission to remove all dams. He stated that he has received many calls from residents who want the dam to stay.

Mr. Waltman questioned if passing the resolution transfers ownership of the property to another organization. Mr. Jones stated that it does not. It allows another agency to manage the project.

Mr. Fuhs questioned why this was necessary as Gring's Mill was most likely not going to be removed by the County. Mr. Lloyd stated Gring's Mill will be retained because they do not feel Gring's Mill is hazardous and is structurally sound. They will request a fish ladder at this location to assist the fish.

Mr. Fuhs suggested installing a fish ladder at Bushong Mill dam.

Mr. Lloyd noted that the resolution is time sensitive. The grant has an expiration date. He noted that action needs to be taken soon and he looked forward to Council's support.

Mayor McMahon questioned the height of the dam. Mr. Lloyd stated that it is 10 to 12 feet.

The meeting adjourned at 7:00 pm.

Respectfully Submitted

By: _____
Linda A. Kelleher, City Clerk